

**IN THE CIRCUIT COURT OF GRUNDY COUNTY, TENNESSEE**

WESLEY BRETT GARNER,  
GARRETT WESTON GARNER,  
EMC INCORPORATED BUILDING  
SYSTEMS, MATTHEW C. ELLIS;

PLAINTIFFS,

v.  
AMERICAN NATIONAL PROPERTY  
AND CASUALTY COMPANY,  
SCOTTSDALE INSURANCE  
COMPANY, PROGRESSIVE HAWAII  
INSURANCE CORPORATION;

DEFENDANTS,

Filed in my office at

22 day of Dec 2009  
Marcia B. B.  
Attys C.R.  
D.C.

JURY DEMAND

DOCKET NO: 8173

DIVISION

I, MARCIA B. B., CLERK OF  
THE CIRCUIT & CHANCERY COURTS  
OF GRUNDY COUNTY, TENNESSEE  
CERTIFY THAT THIS IS A TRUE AND  
CORRECT COPY OF THE ORIGINAL  
DOCUMENT FILED IN THIS OFFICE  
THIS 22 DAY OF Dec 2009

CLERK  DEPUTY CLERK

**COMPLAINT**

Come now the Plaintiffs, Wesley Brett Garner, Garrett Weston Garner, EMC Inc. Building Systems, Matthew C. Ellis, by and through their attorney pursuant to Rule 4 of the *Tennessee Rules of Civil Procedure* and sue the Defendants for breach of contract, bad faith for failure to timely pay monies owed under said contracts, and for violation of the Tennessee Consumer Protection Act. For their causes of action, the Plaintiffs state the following:

I

The Plaintiffs Wesley Brett Garner, Garrett Weston Garner were residents of Grundy County, Tennessee, and were respectively residing at 634 and 638 Fletcher Road, Gruetli-Laager, Tennessee on December 28, 2008.

The Plaintiff EMC Inc. Building Systems, hereinafter "EMC", was an active Tennessee Corporation doing business in the State of Tennessee on December

EXHIBIT

28, 2008. Plaintiff Matthew C. Ellis was a resident of Grundy County, Tennessee, and was residing at 638 Fletcher Road, Apartment Suite B, Gruetli-Laager, Tennessee on December 28, 2008.

Defendant American National Property and Casualty Company, hereinafter "ANPC", Defendant Progressive Hawaii Insurance Corporation, hereinafter "Progressive", Defendant Scottsdale Insurance Company, hereinafter "Scottsdale", are each in the business of providing insurance coverage in Tennessee. All Defendants may be served at 500 James Robertson Parkway, Davey Crockett Tower, Nashville, TN 37243-0565.

## II

The Plaintiff Wesley Brett Garner owned real and personal property located at 634 and 638 Fletcher Road, Gruetli-Laager, Tennessee, insured by Defendant ANPC pursuant to Policy Number 4101G1896. This policy was purchased and in effect on or before December 28, 2008. The policy covered, including, but not limited to, coverage for fire and theft damage to the residence, contents, personal and commercial property, and additional structures surrounding the residences at 634 and 638 Fletcher Road, Gruetli-Laager, Tennessee.

## III

The Plaintiff Garrett Weston Garner was a tenant residing at 638 Fletcher Road, Gruetli-Laager, Tennessee. The Plaintiff Garrett Weston

Garner purchased insurance from ANPC pursuant to Policy Number 41-H-179-45J-7. The policy was purchased and in effect on or before December 28, 2008. The policy provided, including, but not limited to, coverage for fire and theft damage to the contents of his residence located at 638 Fletcher Road, Gruetli-Laager, Tennessee.

IV

The Plaintiff EMC purchased insurance from Scottsdale pursuant to Policy Number CLS1486270. The policy was purchased and in effect on or before December 28, 2008. The policy provided, including, but not limited to, coverage for fire damage to the certain commercial property located on and around 634 and 638 Fletcher Road, Gruetli-Laager, TN.

V

The Plaintiff Matthew C. Ellis was a tenant residing at 638 Fletcher Road, Apartment Suite B, Gruetli-Laager, Tennessee. The Plaintiff Matthew C. Ellis purchased insurance from ANPC pursuant to Policy Number 41-H-155-77J-7. The policy was purchased and in effect on or before December 28, 2008. The policy provided, including, but not limited to, coverage for fire and theft damage to the contents of his residence located at 638 Fletcher Road, Apartment Suite B, Gruetli-Laager, Tennessee.

VI

The Plaintiff EMC purchased insurance from Progressive pursuant to Policy Number 06649516. The policy was purchased and in effect on or before December 28, 2008. The policy provided, including, but not limited to, coverage for damage and theft to the certain vehicles and trailers which were located on and around 634 and 638 Fletcher Road, Gruetli Laager, TN.

## VII

On December 28, 2008 a fire occurred at 634 and 638 Fletcher Road, Gruetli-Laager, Tennessee. This fire caused significant damage to the residential structures, commercial buildings, personal and commercial contents, and vehicles then existing at this location. As a result of the fire, certain structures, vehicles, and personal property, including the residence and office spaces of Plaintiff Wesley Brett Garner, the home contents of Garrett Weston Garner, the commercial property and vehicles for Plaintiff EMC, and the home contents of Plaintiff Matthew C. Ellis, became uninhabitable or unusable for the purpose for which they were intended. In addition to the damage caused by the fire on December 28, 2008, all plaintiffs suffered additional loss due to theft and vandalism to their real and personal property immediately following the fire.

## VIII

The Plaintiffs contacted each and every Defendant immediately regarding the fire and the need for benefits under the policy. The Plaintiffs

did comply with all the obligations required under the policy. The Plaintiffs did provide documentation in a timely manner to each Defendant. Namely, the Plaintiffs have provided proofs of losses, made reasonable efforts to make themselves available for recordable statements, to provide information, and to assist in the determination of the cause of the fire and thefts.

IX

Defendant ANPC is and has been aware that the amount paid the Plaintiffs Wesley Brett Garner and Garrett Weston Garner for their loss is less than that which they are obligated under the insurance policy to provide. Notwithstanding, ANPC continues in its failure to pay.

X

Defendant Scottsdale Insurance Company is and has been aware that the amount paid the Plaintiff EMC Inc. Building Systems for its loss is less than that which they are obligated under the insurance policy to provide. Notwithstanding, Scottsdale continues in its failure to pay.

XI

Defendant Progressive is and has been aware that the amount paid the Plaintiff EMC for its loss is less than that which they are obligated under the insurance policy to provide. Notwithstanding, Progressive continues in its failure to pay.

XII

Defendant ANPC is and has been aware that the amount paid the Plaintiff Matthew C. Ellis for his loss is less than that which they are obligated under the insurance policy to provide. Notwithstanding, ANPC continues in its failure to pay.

### XIII

Defendant ANPC failed to provide benefits under the policy and/or provided benefits less than that which the Plaintiff Wesley Brett Garner was entitled to receive under the policy. By doing so, the Defendant ANPC breached the contracts for insurance which were in effect at the time of the Plaintiff Wesley Brett Garner's loss.

### XIV

Defendant ANPC failed to provide benefits under the policy and/or provided benefits less than that which the Plaintiff Garrett Weston Garner was entitled to receive under the policy. By doing so, the Defendant ANPC breached the contract for insurance which was in effect at the time of the Plaintiff Garrett Weston Garner's loss.

### XV

Defendant Scottsdale failed to provide benefits under the policy and/or provided benefits less than that which the Plaintiff EMC was entitled to receive under the policy. By doing so, the Defendant Scottsdale breached the

contract for insurance which was in effect at the time of the Plaintiff EMC's loss.

## XVI

Defendant Progressive failed to provide benefits under the policy and/or provided benefits less than that which the Plaintiff EMC was entitled to receive under the policy. By doing so, the Defendant Progressive breached the contract for insurance which was in effect at the time of the Plaintiff EMC's loss.

## XVII

Defendant ANPC failed to provide benefits under the policy and/or provided benefits less than what the Plaintiff Matthew C. Ellis was entitled to receive under the policy. By doing so, the Defendant ANPC breached the contracts for insurance which were in effect at the time of the Plaintiff Matthew C. Ellis' loss.

## XIII

The Defendant's failure to pay and/or failure to pay timely were in bad faith and in violation of T.C.A. 56-7-105.

## XIX

The Defendant's failure to pay and/or failure to pay timely were in violation of the Tennessee Consumer Protection Act pursuant to T.C.A. 47-18-101 et. seq.

WHEREFORE, based on the foregoing, Plaintiffs pray that the Court will provide the following relief:

1. That process, issue and the Defendants be compelled to give answer hereto;
2. The Court enter judgment against the Defendants for benefits due under the policy;
3. The Plaintiff be awarded all discretionary damages provided under the causes of action listed in this complaint;
4. The issues be tried by a jury; and
5. The Court award such other relief that the Court deems just.

Respectfully Submitted,

  
Michael M. Raulston TN BPR# 01845  
Attorney for Plaintiffs  
511 Georgia Avenue, 2<sup>nd</sup> Floor  
Chattanooga, TN 37403  
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**IN THE CIRCUIT COURT OF GRUNDY COUNTY, TENNESSEE**

**Wesley Brett Garner, Garrett Wesley  
Garner, EMC Incorporated Building  
Systems**

**Plaintiffs,**

**v.**

**American National Property and  
Causality Company, Scottsdale Insurance  
Company, Progressive Hawaii Insurance  
Corporation**

**Defendants.**

**Filed in my office at**

*1000 2009  
March 10  
2010*

**JURY DEMAND**

**DOCKET NO: 8173**

**DIVISION:** CLERK OF THE CIRCUIT AND CRIMINAL COURTS  
OF GRUNDY COUNTY, TENNESSEE  
CERTIFY THAT THIS IS A TRUE AND  
CORRECT COPY OF THE ORIGINAL  
DOCUMENT FILED IN THIS OFFICE  
THIS *10* DAY OF *March* 2009

*Deputy Clerk* CLERK DEPUTY CLERK

We hereby acknowledge and bind ourselves as Principal (as a party) and  
Surety for the prosecution of this action and payment of all non-discretionary  
costs in this Court which may at any time be adjudged against the Principal as a  
party.

Witness My Hand this 21 day of December, 2009.

S/ Wesley Brett Garner

Party

S/Garrett Wesley Garner

Party

S/ EMC Incorporated Building Systems

Party

*Michael M. Raulston*  
Michael M. Raulston, Esquire/Surety

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**Telephone Number**